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1 Q. What input did you have in this  
2 section?

3 A. As I said before, I reviewed this  
4 section to make sure that it was consistent  
5 with my understanding of The Merger Agreement  
6 and, and accurate. And I did do that.

7 Q. Do you know whose computers this  
8 section came off?

9 MR. BURKE: Objection. You've  
10 asked that question a dozen times about the  
11 entire document. He's answered every single  
12 time the same way. I don't know why you need  
13 to keep asking it. Asked and answered.

14 A. I don't have personal knowledge of  
15 that.

16 Q. Do you have a belief?

17 MR. MAUNDRELL: Objection.

18 MR. BURKE: Objection.

19 A. Yes.

20 Q. What is your belief?

21 MR. MAUNDRELL: Objection.

22 A. I believe that -- I believe that  
23 it came off of KMK's computer.

24 Q. Okay. Let's take a look at the  
25 Stock Option Agreement that's found beginning

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1 by attorneys at KMK, correct?

2 MR. BURKE: Objection, foundation.  
3 If you know.

4 A. Well, again, I did not write it.  
5 Provident would have been responsible for its  
6 accuracy and we would have worked with them to,  
7 to make sure that the summary was correct -- or  
8 this information was correct.

9 Q. With respect to the information  
10 contained in Defendant's Exhibit 1, did you  
11 believe that KMK had to check information that  
12 it obtained from Provident for accuracy?

13 A. It depends on what kind of  
14 information you're talking about, but in  
15 general I would say no.

16 Q. Okay. Was there a specific type  
17 of information that you believed KMK would or  
18 should check for accuracy?

19 A. Not necessarily. Remember,  
20 Provident has a substantial in-house legal  
21 department who was also involved in this  
22 transaction, so if we were asked to follow up  
23 on particular sections, particular agreements  
24 or particular parts of a document, we would --  
25 we would do so, but that wouldn't necessarily

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1 on page 41, going up to page 43, about the  
2 middle of the page where it starts Provident  
3 Financial Group. Do you see that section, sir?

4 A. Yes, I do.

5 Q. Did someone at KMK write this  
6 section?

7 MR. BURKE: Objection, foundation.

8 A. I don't recall. Again, this is a  
9 section which purports to summarize the terms  
10 of the stock option agreement, and both parties  
11 to that agreement would have been involved in  
12 the preparation of this section.

13 Q. And does that mean Provident and  
14 OHSL?

15 MR. BURKE: Objection to form. I  
16 don't know what that means.

17 A. It means Provident, OHSL and their  
18 respective law firms, Dinsmore & Shohl and KMK.

19 Q. Right, I just wanted to clarify  
20 that. That's what I thought you meant. This  
21 section, Provident Financial Group, beginning  
22 on page 43, going over to page 44, that would  
23 be the responsibility of Provident, correct?

24 A. Correct.

25 Q. And that would have been written

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1 fall within our purview.

2 Q. Were you asked to do that in this  
3 case?

4 A. My recollection is there were  
5 parts of the transaction that we were asked not  
6 to be involved in.

7 Q. What parts were they?

8 A. Well, for example, I don't recall  
9 any involvement in seeking the approval of the  
10 Federal Reserve Board for the approval of the  
11 transaction, that I had certainly. And I don't  
12 recall -- I don't recall supervising anybody  
13 else in the firm on that -- on that topic.

14 Q. With respect to information that  
15 came from OHSL and its counsel, what if any  
16 responsibility do you believe KMK and Provident  
17 had to check the veracity of the information?

18 MR. GILLIGAN: You have two  
19 answers to two questions, Tim.

20 A. Yes. I don't think that it is our  
21 responsibility to check the veracity.

22 MR. GILLIGAN: Now, is that KMK?  
23 He asked you both Provident and KMK.

24 A. Well, the answer would be the same  
25 in my opinion.

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1 Q. Okay. In order to perform your  
2 work on the merger transaction, was it  
3 necessary for you to have an opinion as to the  
4 sophistication of OHSL's Board members?

5 A. Repeat that question for me.

6 (Record read by Reporter.)

7 MR. BURKE: Object to the form.

8 You may answer.

9 A. No.

10 Q. Was it necessary for you to have  
11 an opinion with respect to Provident's Board  
12 members?

13 A. No.

14 Q. Did the sophistication of OHSL's  
15 Board members ever come up in discussions with  
16 Cliff Roe?

17 A. Not that I recall.

18 Q. Of the approximately 250 hours you  
19 spent on this merger transaction, approximately  
20 how much time was spent talking --

21 A. That's not what I said.

22 MR. BURKE: That's exactly right.

23 Q. Was it 200?

24 MR. BURKE: No.

25 MR. GILLIGAN: No.

1 my time on this transaction was spent in  
2 negotiation of the definitive merger agreement.  
3 And that would have involved Cliff Roe to a  
4 very significant extent.

5 But I was not involved in the  
6 preparation of the proxy statement and  
7 prospectus and, in fact, had moved on to  
8 another bank transaction very shortly after The  
9 Merger Agreement was signed.

10 Q. Which one was that?

11 A. That was Provident's acquisition  
12 of Fidelity Financial.

13 Q. And that's disclosed here in the  
14 proxy materials, correct?

15 A. I don't recall.

16 Q. Did Gary Kreider perform services  
17 in the OHSL-Provident merger?

18 A. Yes.

19 Q. What did Mr. Kreider do?

20 A. Well, Mr. Kreider served at that  
21 time as the head of our securities department.  
22 He was aware that this -- the work on this  
23 transaction would be -- was going to be  
24 delegated to Mark Weiss. I think he was  
25 probably copied on some of the documents. What

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1 A. I said it was less than 250.

2 Q. Okay. I said approximately 250, I  
3 stand corrected. How would you like me -- of  
4 the total time that you billed on this merger  
5 transaction, approximately how much was devoted  
6 to conversations with Cliff Roe?

7 MR. BURKE: Objection. Calls for  
8 speculation, foundation. You may answer.

9 MR. GILLIGAN: Do you want numbers  
10 or percentages or --

11 Q. Anything is fine. ~~三~~

12 A. I -- I couldn't answer that  
13 question fairly. I -- I don't know. I don't  
14 know how you would even calculate such a --  
15 such a percentage or number.

16 Q. Would your billing -- I didn't  
17 mean to interrupt. Would your billing records  
18 reflect that?

19 A. I don't think so.

20 Q. Do you remember generally what you  
21 talked to Cliff Roe about?

22 A. Yes.

23 Q. Okay. Can you give me categories  
24 of what you talked to him about?

25 A. My -- my main effort and most of

1 exactly he did in the preparation of the  
2 documents, I do not recall --

3 Q. Okay.

4 A. -- if anything.

5 Q. Okay. Did David Rosenberg perform  
6 services with respect to the OHSL-Provident  
7 merger?

8 A. Yes.

9 Q. What did Mr. Rosenberg do?

10 A. Well, at that time Mr. Rosenberg  
11 was a primary contact and liaison between KMK  
12 and the Provident Bank. And he was somewhat  
13 involved in the preparation of The Merger  
14 Agreement and The Stock Option Agreement at the  
15 beginning of the transaction.

16 And I know that because he and I  
17 worked together on part of those documents.  
18 But his role subsequent to the execution of the  
19 definitive agreement, I -- I couldn't tell you.  
20 I think it would have been very, very minimal,  
21 but I -- I couldn't really speak to that.

22 Q. In how many merger transactions  
23 have you had a director resign days before the  
24 definitive vote was taken?

25 MR. MAUNDRELL: Objection.

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1 MR. BURKE: Objection. Assumes  
2 facts not in evidence. Calls for speculation.  
3 Relevance.

4 A. Some, but I couldn't give you a  
5 number.

6 Q. Would you characterize such a  
7 circumstance as being unusual?

8 MR. BURKE: Objection.

9 MR. MAUNDRELL: Objection. Asked  
10 and answered also.

11 MR. BURKE: Absolutely.

12 A. No, not necessarily. As I said  
13 before, there are lots of reasons why people  
14 can resign from a Board.

15 Q. Can I direct your attention to  
16 page 56, the section entitled Comparison of  
17 Stockholder Rights?

18 A. Yes. I've just looked through  
19 page 62.

20 Q. Okay. Was this section written by  
21 KMK attorneys?

22 MR. BURKE: Objection, foundation.

23 A. Again, this would have been a  
24 collaborative effort.

25 Q. Who -- collaborative with

1 ownership would be if I hold securities as  
2 agent for a third party or if I hold securities  
3 in a trust capacity for a third party or as  
4 custodian or guardian for a third party. So  
5 it's a kind of indirect ownership concept.

6 Q. Okay. And Mr. Hanauer appears to  
7 be the largest OHSL shareholder, is that  
8 correct?

9 MR. BURKE: Objection. Document  
10 speaks for itself.

11 MR. GILLIGAN: As opposed to  
12 beneficial owners? Are they supposed to be one  
13 in the same?

14 A. Let me read this.

15 MR. GILLIGAN: The question is as  
16 to shareholders, and the legend indicates that  
17 these percentages are beneficial ownership.  
18 That's why I'm asking, are they supposed to be  
19 the same?

20 A. Okay. Do you want me to assume,  
21 Mike, to answer this question, whether this  
22 information is correct and complete?

23 Q. Well, let's put it this way:

24 Judging by the table, Mr. Hanauer appears to be  
25 the largest OHSL shareholder. Is that fair?

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1 Dinsmore: is that right?

2 A. Collaborative with Dinsmore,  
3 correct.

4 Q. And whose computer system did this  
5 ultimately come off, if you know?

6 A. I don't know.

7 Q. With respect to the majority of  
8 this document, whose computer system did it  
9 come off, if you know?

10 A. I think I've said several times, I  
11 do not know the answer to that question.

12 Q. Were you involved in changes that  
13 may have been made to this section?

14 A. I don't recall.

15 Q. Okay. Let me direct your  
16 attention to page 63. Do you see that?

17 A. Um-hmm, yes.

18 Q. And can you explain the concept of  
19 beneficial ownership of stock?

20 MR. GILLIGAN: As it's used in  
21 this context on that page?

22 Q. Yes, absolutely.

23 A. All right. Well, beneficial  
24 ownership is usually distinguished from legal  
25 ownership. And an example of beneficial

1 MR. BURKE: Objection. Document  
2 speaks for itself.

3 A. I -- yes. I would agree, except  
4 that there was also an option that was held by  
5 Provident pursuant to the stock option  
6 agreement, which if exercised would have made  
7 Provident the largest single shareholder.

8 Q. When was that option agreement  
9 supposed to be exercised or contemplated to be  
10 exercised?

11 A. I would have to review the  
12 document to refresh my recollection on that,  
13 Mike. I don't remember the timing, but it was  
14 a -- I just don't remember.

15 Q. Okay. How was the date July 31st,  
16 1999, selected for this table?

17 MR. BURKE: Objection, foundation.  
18 Calls for speculation.

19 A. I don't know.

20 Q. If the date had been July 30th,  
21 which was the effective day of Mr. Herron's  
22 resignation, would he have had to have been  
23 included in this table?

24 MR. MAUNDRELL: Objection.

25 MR. BURKE: Objection. Calls for

37 (Pages 142 to 145)

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1 speculation.

2 A. I, I don't know.

3 Q. Do you know if Mr. Hanauer was the  
4 only member of management who served on OHSL's  
5 Board?

6 A. I do not recall that.

7 Q. Do you believe generally speaking  
8 that in evaluating a proposed business  
9 combination, shareholders and Wall Street  
10 analysts often look to a member of management  
11 who also serves on the company's Board for  
12 information about a transaction?

13 MR. BURKE: Objection,  
14 speculation.

15 MR. GILLIGAN: Objection. That's  
16 a compound question. Would you separate it  
17 out? You asked for two different sets of  
18 groups of people.

19 A. I don't know exactly what you  
20 mean. When you say like the phrase "looked  
21 for" or "look to," what do you mean by that?

22 MR. GILLIGAN: Well, the -- I'm  
23 objecting, Tim. He's asking for two different  
24 people.

25 A. Right.

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1 be a point in time when we're going to walk  
2 because of this conduct.

3 MR. MESH: Lou, you can do that at  
4 any time.

5 MR. GILLIGAN: No kidding, Gene.  
6 I appreciate that. I appreciate that.

7 MR. MESH: Since you've invited  
8 comment, you can do that at any time you'd  
9 like.

10 MR. BRAUTIGAM: Lou, the correct  
11 procedure is for me to finish my question and  
12 then you can state the word objection.

13 MR. GILLIGAN: Go ahead.

14 MR. BRAUTIGAM: Thank you.

15 BY MR. BRAUTIGAM:

16 Q. Do you believe that shareholders  
17 often look to the CEO of a company for  
18 information about a proposed business  
19 transaction?

20 MR. MAUNDRELL: Objection. Form,  
21 foundation, speculation.

22 MR. BURKE: Objection,  
23 speculation.

24 A. Mike, I don't think there's really  
25 a meaningful answer to that question, because

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1 MR. GILLIGAN: It's a compound  
2 question.

3 A. Well, I also just don't understand  
4 the question --

5 MR. GILLIGAN: Okay.

6 A. -- so I need help understanding  
7 it

8 MR. GILLIGAN: All right.

9 Q. Do you believe that when Wall  
10 Street analysts and shareholders evaluate a  
11 proposed business combination --

12 MR. GILLIGAN: Object. Don't  
13 answer the question. It's a compound question.  
14 Shareholders are not the same. Are you asking  
15 if the person is a Wall Street analyst and a  
16 shareholder at the same time? Otherwise you're  
17 asking two different sets of people.

18 MR. BRAUTIGAM: Lou, you're  
19 interrupting me, really --

20 MR. GILLIGAN: I'm trying to save  
21 you time, because I'm not going to let him  
22 answer the question.

23 MR. BRAUTIGAM: Lou, there is a  
24 procedure.

25 MR. GILLIGAN: There will get to

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1 people behave in lots of different ways and  
2 they look to all kinds of different reasons for  
3 advice and take into account all different  
4 factors when they're considering a transaction.  
5 And so the question really doesn't have a  
6 categorical answer.

7 Q. Do you believe that Wall Street  
8 analysts typically look to the CEO,  
9 particularly if he's a member of the company's  
10 Board, for information with respect to a  
11 proposed business combination?

12 MR. MAUNDRELL: Objection. Form,  
13 foundation, speculation.

14 A. I would say no, because in the  
15 context of a public company, analysts rely on  
16 publicly filed information. They don't  
17 generally look to the CEO for information  
18 that's not otherwise publicly available.

19 Q. Do you believe that Wall Street  
20 analysts typically look to the view of the  
21 largest shareholder in a company in evaluating  
22 a proposed business combination?

23 A. Again, you've used the phrase  
24 "looked to" in at least three different  
25 questions, and I just don't know what that

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1 means --

2 Q. Well --

3 A. -- when you say do they rely upon.

4 Q. -- as one factor, perhaps among  
5 many, in evaluating the total mix of  
6 information as to whether or not they should  
7 vote for or against a proposed business  
8 combination?

9 MR. BURKE: Objection.

10 MR. MAUNDRELL: Object to form.  
11 Foundation, speculation.

12 MR. BURKE: Same objection. Calls  
13 for speculation.

14 A. They might. In this case I would  
15 doubt it, frankly, because the CEO would not be  
16 part of the ongoing enterprise, but -- but also  
17 analysts wouldn't be concerned about this  
18 anyway, but I -- I think your question is very  
19 speculative.

20 Q. You mentioned in your previous  
21 answer that the CEO would not be part of the  
22 ongoing enterprise. What was the basis for  
23 that part of your answer?

24 A. Well, the CEO of the acquired  
25 company had a relatively, you know, minor

1 would have had no way of knowing whether or not  
2 Mr. Hansauer was going to continue on with the  
3 acquiring entity, is that correct?

4 MR. MAUNDRELL: Objection. Form,  
5 foundation, speculation.

6 MR. BURKE: Same objection. As to  
7 what the shareholders of OHSL may or may not  
8 have known?

9 A. Yes, I don't -- I don't know. I  
10 don't recall.

11 MR. BRAUTIGAM: Okay. Let's take  
12 a break for lunch.

13 (Recess for lunch.)

14 BY MR. BRAUTIGAM:

15 Q. Good afternoon, Mr. Matthews.

16 A. Good afternoon.

17 Q. Mr. Matthews, did you have lunch  
18 with Mr. Gilligan and Mr. Burke?

19 A. Yes, I did.

20 Q. Did you talk about the deposition?

21 A. No.

22 Q. Did you talk about the litigation?

23 A. No.

24 Q. Have you ever sought or received  
25 legal advice from Mr. Burke?

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1 long-term role, if I recall correctly. I think  
2 this was maybe -- we can look at the document,  
3 but I don't recall a significant role on an  
4 ongoing basis, other than maybe a two or three  
5 year employment agreement or something like  
6 that.

7 Q. When did --

8 A. And I don't recall that.

9 Q. When did you understand that the  
10 CEO of OHSL would not be offered employment  
11 with Provident Bank?

12 A. Well, like I said, I do not have a  
13 recollection on that. I was really speaking  
14 mainly of, you know, my experience in mergers  
15 and acquisitions generally, where often the  
16 target company executives do not have a  
17 continuing role.

18 I do not remember the role that  
19 Mr. Hansauer specifically played, you know,  
20 after the transaction was completed, if that's  
21 who -- are you referring to Mr. Hansauer?

22 Q. Yes.

23 A. Yes, I don't recall.

24 Q. At the time of the shareholder  
25 vote, October 25th, 1999, the shareholders

1 A. No.

2 Q. Does it strike you as unusual that  
3 Mr. Gilligan is representing you in this  
4 litigation and Mr. Burke is representing other  
5 entities?

6 MR. BURKE: Objection to  
7 relevance.

8 A. No.

9 Q. Why not?

10 MR. GILLIGAN: What's this have to  
11 do with taking a deposition? Come on. Get on  
12 with the substance of the deposition, will you?  
13 This is nonsense. I've never seen such a bunch  
14 of questions.

15 I've practiced law for 32 years in  
16 this community. I've practiced with every --  
17 almost every lawyer around and I have never  
18 seen such an exercise as this. It's  
19 ridiculous. Just get on with the substance.

20 What's that have to do with the  
21 substance of the case? You've got a case, ask  
22 him questions about the case. Try to make your  
23 case. Your case has nothing to do with who's  
24 lawyering who. If you've got a personal  
25 problem with somebody here, take it up with the



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1 Bar Association and stop wasting our time.  
2 Let's go.

3 MR. BRAUTIGAM: There's a question  
4 pending.

5 THE WITNESS: What's the question?  
6 (Record read by Reporter.)

7 MR. BURKE: Objection to form.

8 A. Within the context of why I'm  
9 here, which I presume is as a witness in the  
10 case, the Thiemann case, I have asked Lou to  
11 serve as my lawyer as a witness, and I've not  
12 asked Jim. And so the fact that Lou is here as  
13 my lawyer and Jim is here in a different  
14 capacity is perfectly natural, from my point of  
15 view.

16 Q. Are you familiar with the ethical  
17 rules and disciplinary rules with respect to  
18 the dual role of a lawyer or law firm serving  
19 as both witness and advocate in litigation?

20 MR. GILLIGAN: If you've got a  
21 problem, take it up with the Bar Association.  
22 In fact, I challenge you to do it. And stop  
23 wasting time in the deposition. He's not here  
24 to answer questions on that and I'll instruct  
25 you not to answer. Now, get on with the

1 BY MR. BRAUTIGAM:

2 Q. Are you familiar with the term  
3 unanimous?

4 A. Sure.

5 Q. What do you understand that term  
6 to mean?

7 A. In what context are you referring?  
8 It can mean a lot of different things.

9 Q. In the context of voting.

10 A. Voting as in a shareholder vote?  
11 A director vote?

12 Q. Either one.

13 A. A written consent document?

14 Q. Voting in general.

15 A. So you want me to --

16 MR. BURKE: Objection to form.

17 A. -- give you a treatise on what the  
18 word means?

19 Q. Well, it doesn't have to be a  
20 treatise, if you can answer the question,  
21 that's all.

22 A. I think -- I think it can have  
23 different meanings, but unanimous means, to me,  
24 a vote without dissent.

25 Q. On the companies where you serve

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1 deposition or we're going to leave.

2 MR. BRAUTIGAM: What's the basis  
3 for that instruction?

4 MR. GILLIGAN: Oh, I thought you  
5 didn't want to ever hear the basis of the --  
6 because it's got nothing to do with this  
7 deposition. Nothing to do with the deposition.  
8 He's not -- and you're asking him an expert  
9 opinion question.

10 MR. BRAUTIGAM: It's an improper  
11 instruction and you know it.

12 MR. GILLIGAN: Then take it up  
13 with the Court. Take it up with the Bar  
14 Association. Let's move on. Why don't you get  
15 on to the merits of -- or the lack of merits of  
16 your case. Deal with something substantive.  
17 That's what we're here for.

18 MR. BRAUTIGAM: Are you done with  
19 your speech, Lou?

20 MR. GILLIGAN: Yes.

21 MR. BRAUTIGAM: Well, if you need  
22 more time, I want to give you a full  
23 opportunity to make your record.

24 MR. GILLIGAN: You've heard it.

25 MR. BRAUTIGAM: Okay. Great.

1 as a director, if -- let's say five people are  
2 present for the vote and no person votes  
3 against the transaction, but some people  
4 abstain. Is that recorded in the books and  
5 minutes of those companies?

6 MR. MAUNDRELL: Objection.

7 MR. BURKE: Objection. Calls for  
8 speculation. You may answer.

9 A. Mike, it depends. I mean, I've  
10 been involved in the preparation of lots of  
11 minutes and that could be reflected as a  
12 unanimous vote. That could be reflected in a  
13 role call format in a, in an entry. You can  
14 have voice votes without necessarily taking  
15 role, and that can be considered a unanimous  
16 vote.

17 Within my church, for example,  
18 when we admit a new member we take a voice  
19 vote. And if everybody says yea, it's  
20 considered -- and no one says nay, it's  
21 considered unanimous, even though some people  
22 may not voice a nay objection. So I don't know  
23 what you mean. You have to give me a context  
24 in which to evaluate this.

25 Q. Okay. Let's assume for the sake

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1 of this question that you have an OHSL director  
2 and he's out of the country.

3 A. Um-hmm.

4 Q. He's not present at the meeting.

5 A. Right.

6 Q. Do you believe that his absence  
7 from the meeting should be disclosed to the  
8 shareholders?

9 MR. BURKE: Objection.

10 MR. MAUNDRELL: Objection.

11 MR. BURKE: Calls for speculation.

12 A. No.

13 Q. Why not?

14 A. I don't think it's material.

15 Q. Okay. And what factors did you  
16 consider in coming to that conclusion?

17 A. Well, I assumed that there was a  
18 quorum of the Board which did meet. You said  
19 that only one director was, was missing or out  
20 of the country, so I'm assuming that the  
21 remaining directors are present in person and  
22 prepared to vote. And, and so the fact that  
23 one director happened to -- happens not to be  
24 at a meeting is, is -- is not material.

25 Q. Okay. What if one director was

1 Defendant's Exhibit 1.

2 A. Yes.

3 Q. Your Board of Directors

4 unanimously approved the acquisition and  
5 believes that it is in the best interest of  
6 OHSL stockholders. Do you think a fair reading  
7 of that states that the chairman of the Board  
8 of OHSL voted affirmatively in favor of the  
9 merger with Provident?

10 MR. BURKE: Objection.

11 MR. MAUNDRELL: I'll join that.

12 A. I would not necessarily infer  
13 that, because the chairman may or may not have  
14 been present.

15 Q. Okay.

16 A. And I would have to -- and, and --  
17 nor does this disclose whether the chairman was  
18 present or voiced an objection. So I, I would  
19 say I couldn't answer that question.

20 Q. Okay. Let me ask you to assume  
21 for purposes of this question that the chairman  
22 was present but simply did not vote. Didn't  
23 vote yes, didn't vote no.

24 A. Um-hmm.

25 Q. Do you think that that sentence is

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1 not at the meeting and the chairman of the  
2 Board did not vote on the transaction at all?  
3 Would you consider that to be material?

4 MR. BURKE: Objection.

5 MR. MAUNDRELL: Objection.

6 MR. BURKE: Calls for speculation.

7 Assumes facts not in evidence, form. You may  
8 answer.

9 A. Again, as I said, no, not  
10 necessarily. I think that you would have to  
11 look at all of the facts and circumstances to  
12 evaluate the materiality of any of those  
13 things. If that caused a quorum not to be  
14 present, then that would be an important  
15 consideration, because you wouldn't have a  
16 valid vote.

17 Q. Okay.

18 A. But if I am to assume a quorum is  
19 present and one person recuses himself for some  
20 reason -- and there can be lots of reasons why  
21 people recuse themselves from participating in  
22 a vote -- I don't find that to be a problem or  
23 an issue.

24 Q. Okay. Let's go back to the first  
25 sentence of this paragraph on page one of

1 still correct?

2 MR. MAUNDRELL: Objection.

3 MR. BURKE: Objection. Incomplete  
4 hypothetical. Calls for speculation.

5 MR. GILLIGAN: Is this being asked  
6 as an expert witness question? Are you asking  
7 him as an expert? I mean, otherwise he's  
8 speculating. Who cares what he thinks?

9 MR. BRAUTIGAM: Lou, we're doing  
10 fine.

11 MR. GILLIGAN: Well, I'll instruct  
12 you if you're not an expert in this and you  
13 don't have enough of a foundation for an expert  
14 opinion question, don't answer it --

15 A. Well, I don't want --

16 MR. GILLIGAN: -- because it seems  
17 to me you're being held to the standard of an  
18 expert witness, so I would approach the  
19 question that way, Mr. Matthews.

20 A. Well, again it sounded like a  
21 hypothetical to me and I'm not sure I  
22 understand all of the elements of the  
23 hypothetical.

24 BY MR. BRAUTIGAM.

25 Q. Okay. Well, I want you to

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1 understand everything about it.  
 2 A. Okay.  
 3 Q. Okay. We have the OHSL Board,  
 4 August 2nd, 1999, they have a meeting, a quorum  
 5 is present, Cliff Roe is actually in the room  
 6 and a vote is taken. And Mr. Brinker, the  
 7 chairman of OHSL's Board, simply does not vote.  
 8 Do you believe that that's a unanimous vote?  
 9 MR. BURKE: Objection.  
 10 MR. MAUNDRELL: Objection. Form,  
 11 foundation.  
 12 MR. BURKE: Incomplete  
 13 hypothetical. How did everybody else vote?  
 14 MR. GILLIGAN: And is that -- are  
 15 you asking for a legal opinion?  
 16 A. And did everybody else vote in  
 17 favor of the transaction on that date? Am I --  
 18 Q. The people who were present -- the  
 19 OHSL directors who were present, except for Mr.  
 20 Brinker, did vote in favor of the transaction.  
 21 MR. MAUNDRELL: Well, I'll object  
 22 to that.  
 23 A. Did Mr. Brinker vote against the  
 24 transaction?  
 25 Q. No

1 have been disclosed?  
 2 MR. MAUNDRELL: Objection.  
 3 A. No.  
 4 Q. Do you believe that the absence of  
 5 Mr. McKeirnan from the meeting should have been  
 6 disclosed?  
 7 MR. MAUNDRELL: Objection.  
 8 MR. BURKE: Objection. Asked and  
 9 answered.  
 10 A. No.  
 11 Q. Why not?  
 12 MR. BURKE: Objection. Asked and  
 13 answered.  
 14 A. Because the only thing that does  
 15 matter is whether according to the articles of  
 16 incorporation and bylaws of the company, the  
 17 meeting was properly convened and a vote yea or  
 18 nay on the transaction as a whole was -- was  
 19 made. That's -- whether a particular director  
 20 is absent from a meeting to me is not a  
 21 material -- a material item.  
 22 Q. Is that still true when you talk  
 23 about Your Board of Directors, which I submit  
 24 implies the entire Board?  
 25 MR. MAUNDRELL: Objection.

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1 A. I would say that's a unanimous  
 2 vote.  
 3 Q. Why would you say that?  
 4 A. Because of --  
 5 MR. MAUNDRELL: Now you're going  
 6 to argue with him? You've asked him a  
 7 hypothetical question. You make up the facts,  
 8 he answers your question. And then after he  
 9 answers your question, you're going to argue  
 10 with him?  
 11 Q. I'm not arguing with the witness.  
 12 A. Because in your hypothetical, all  
 13 of the people who participated in the vote  
 14 voted in favor of the transaction and there was  
 15 no dissent. So, therefore, it is a unanimous  
 16 vote and this is a correct statement.  
 17 Q. Do you believe that the statement  
 18 in the context that I have given you is  
 19 somewhat misleading?  
 20 A. No.  
 21 Q. Do you believe that it's complete?  
 22 MR. MAUNDRELL: Objection.  
 23 A. Yes.  
 24 Q. Do you believe that Mr. Brinker's  
 25 lack of an affirmative vote in favor should

1 MR. BURKE: Whose Board?  
 2 MR. GILLIGAN: Who is Your Board?  
 3 MR. MAUNDRELL: Yes, and who does  
 4 it imply this to?  
 5 MR. BURKE: Objection to form.  
 6 MR. BRAUTIGAM: Your Board of  
 7 Directors refers to the OHSL Board.  
 8 MR. MAUNDRELL: I object.  
 9 MR. BURKE: Objection. Is that a  
 10 question?  
 11 MR. BRAUTIGAM: Yes.  
 12 MR. BURKE: Objection to form.  
 13 MR. BRAUTIGAM: There's a question  
 14 pending.  
 15 MR. BURKE: Objection to form.  
 16 THE WITNESS: Repeat the question  
 17 for me, please.  
 18 (Record read by Reporter.)  
 19 A. Is what still true?  
 20 (Record read by Reporter.)  
 21 MR. BURKE: Objection to form.  
 22 A. Still true.  
 23 BY MR. BRAUTIGAM:  
 24 Q. From a point of view of corporate  
 25 disclosure, would there have been anything



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1 wrong with the disclosure if it said on the  
2 first page of Defendant's Exhibit 1, Your Board  
3 of Directors voted in favor of the merger with  
4 Provident Bank, but by the way, Mr. Herron  
5 resigned, Mr. Hanauer changed his vote from  
6 abstain to in favor of, Mr. McKeirnan was out  
7 of the country, and Mr. Brinker didn't vote?

8 MR. BURKE: Objection to form.  
9 Compound question.

10 A. Are you asking me to assume all of  
11 those things, none of which I know to be true?

12 Q. Right. If those things were true,  
13 would there be anything wrong from the point of  
14 view of corporate disclosure in stating that in  
15 the proxy materials?

16 MR. GILLIGAN: Again, is that an  
17 expert opinion question?

18 MR. BURKE: But I will also note  
19 for the record you have materially misstated  
20 the facts of this case in that question. And I  
21 would caution the witness upon relying upon or  
22 assuming facts that are inaccurate and false.

23 MR. BRAUTIGAM: Hold on, I want to  
24 address Mr. Burke's objection.

25 (Record read by Reporter.)

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1 capacity that you feel comfortable with?

2 MR. BURKE: Objection to form.

3 MR. MAUNDRELL: Objection.

4 MR. BURKE: Answer what?

5 MR. BRAUTIGAM: Answer the  
6 question.

7 MR. BURKE: The question was  
8 phrased in terms of disclosure.

9 THE WITNESS: Are you -- are you  
10 saying in the --

11 MR. BRAUTIGAM: If I --

12 THE WITNESS: Can there be a  
13 proper vote of the Board of Directors with  
14 those set -- with that set of facts for  
15 purposes of making a recommendation to the  
16 shareholders to approve the merger?

17 MR. BRAUTIGAM: No, that's not my  
18 question.

19 THE WITNESS: Okay.

20 BY MR. BRAUTIGAM:

21 Q. My question is: Would there have  
22 been anything wrong with including the  
23 information that I gave you on the first page  
24 or at any point in the proxy materials, meaning  
25 Your Board of Directors approved the

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1 A. Okay. Mike, I'm not an expert in  
2 corporate disclosure. And in the context of a  
3 disclosure in a securities matter, which is  
4 what this is, I would not be qualified to  
5 answer that question.

6 So if you're asking me as a  
7 layperson to -- you know, what my belief or  
8 opinion about that is, I want to make sure that  
9 it's clear that I'm not answering this as an  
10 expert --

11 Q. Okay.

12 A. -- in disclosure.

13 Q. Okay.

14 A. Because your question -- the  
15 lead-in phrase of your question was in the  
16 context of corporate disclosure are -- with all  
17 of these various assumptions, is this true.

18 Q. Okay.

19 A. I was answering the question in  
20 the context of corporate governance and whether  
21 there could be a proper vote of a Board that  
22 would be in compliance with its articles and  
23 bylaws. And those are two completely  
24 different -- different questions.

25 Q. Okay. Can you answer it in the

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1 acquisition, but one director resigned, one  
2 director was out of the country, the chairman  
3 of the Board didn't vote, and the chief  
4 executive officer changed his vote from a few  
5 days earlier from abstain to in favor.

6 MR. BURKE: Objection.

7 MR. GILLIGAN: Excuse me. Now,  
8 he's already testified he can't answer that as  
9 an expert.

10 Q. I heard his -- what he said.

11 A. Mike, you're asking me again about  
12 disclosure. I thought you were going to talk  
13 about corporate governance.

14 Q. Well, I thought you said you could  
15 answer the question as a layman or words to  
16 that effect. So if you can do that, I  
17 understand you claim not to be an expert in  
18 corporate governance.

19 MR. BURKE: No, he doesn't claim  
20 to be an expert in --

21 Q. Corporate disclosure, excuse me.

22 A. Your question was phrased in terms  
23 of would that disclosure on this cover sheet be  
24 proper. That's a disclosure question that I'm  
25 not qualified to answer.

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1 MR. GILLIGAN: That's the answer,  
2 so let's move on.  
3 Q. Would Mark Weiss be qualified to  
4 answer that?  
5 MR. MAUNDRELL: Objection.  
6 MR. BURKE: Objection.  
7 MR. GILLIGAN: He'll be here  
8 tomorrow, go ahead and ask him that.  
9 A. Yes.  
10 Q. Mark Weiss would be qualified to  
11 answer that question?  
12 A. Yes.  
13 MR. MAUNDRELL: Objection.  
14 Q. Are you familiar with the case  
15 Basic, Inc. v. Levinson, United States Supreme  
16 Court?  
17 A. No.  
18 Q. Are you familiar with the TSC  
19 Industries, Inc. v. Northway Industries case?  
20 A. No.  
21 Q. Are you familiar with the Rubin v.  
22 Schottenstein, Zox & Dunn case, Sixth Circuit?  
23 A. No.  
24 Q. Mr. Matthews, I hand you what has  
25 previously been marked as Plaintiff's

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1 Q. August the 2nd of 1999?  
2 A. Um-hmm.  
3 Q. I can't do it right now. Maybe I  
4 can do it at a break.  
5 A. Okay. I do not -- I do not recall  
6 seeing this document specifically. As I said  
7 here, I think that with some additional help, I  
8 would be able to recall this though.  
9 Q. Okay. Are you familiar with this  
10 document?  
11 MR. GILLIGAN: He just --  
12 MR. BURKE: Objection. Asked and  
13 answered.  
14 MR. GILLIGAN: He just answered  
15 that.  
16 A. I can certainly see what it is,  
17 Mike. And again, with a little help I might be  
18 able to help you identify where it came from or  
19 the circumstances under which it was -- it was  
20 telecopied.  
21 Q. Okay. Well, I'm not getting to  
22 the circumstances under which it was telecopied  
23 yet. What is this document?  
24 A. Well, it appears to be an  
25 incomplete fax, missing the cover sheet, with

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1 Deposition Exhibit 20.  
2 A. Okay.  
3 Q. Have you seen this document  
4 before?  
5 MR. GILLIGAN: Can I ask you,  
6 Mike, I'm -- I don't know anything about this,  
7 but I look through here and I see big, huge  
8 gaps in page numbers.  
9 A. Right. I think I can explain  
10 that.  
11 MR. GILLIGAN: Oh, okay, go ahead.  
12 A. Well, first of all, there's a  
13 missing first page to this document.  
14 Q. Okay.  
15 A. The document -- this appears to be  
16 a fax, according to the header, sent from our  
17 office, starting with page two. So I think  
18 that the first page would probably elucidate  
19 this.  
20 Q. Well, you're way ahead of me, so  
21 let me just ask my questions in my slow, basic  
22 best. You've seen this document before,  
23 correct?  
24 A. Well, can you tell me what day of  
25 the week August the 2nd was?

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1 selected pages from The Merger Agreement and  
2 The Stock Option Agreement showing changes that  
3 were made to the two documents.  
4 It would also appear that this was  
5 very close to the conclusion of the process,  
6 where -- where we were negotiating these two  
7 documents. And again, without some additional  
8 information, I don't want to speculate as to  
9 where it came from, but I --  
10 Q. Okay. Well, do you see the fax  
11 signature line on the first page and actually  
12 on each and every page?  
13 MR. MAUNDRELL: On the first page,  
14 no. It says page two and the witness has  
15 already said the first page is missing.  
16 MR. BURKE: Mike, this is not the  
17 first page of the document.  
18 MR. BRAUTIGAM: This is what I  
19 have. This is the document, this is  
20 Plaintiff's Exhibit 20.  
21 THE WITNESS: I just can't tell  
22 you then.  
23 MR. MAUNDRELL: Are you going to  
24 listen to what the witness said?  
25 MR. BRAUTIGAM: I listened to what

44 (Pages 170 to 173)

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1 the witness said, Mike. I don't have the first  
2 page. This is Plaintiff's Exhibit 20. This is  
3 the document. That's the universal document.  
4 Maybe it exists, maybe it doesn't. This is  
5 what I have.

6 MR. MAUNDRELL: Don't get me  
7 involved in universal documents, it's not my  
8 universal document.

9 MR. BRAUTIGAM: I didn't say  
10 universal document.

11 MR. MAUNDRELL: You did.

12 BY MR. BRAUTIGAM:

13 Q. Anyway, does it appear to you that  
14 this document was sent to you from someone at  
15 KMK?

16 A. Based solely on the fact that it  
17 has a telecopier on the head of the documents,  
18 yes, but it is complete.

19 Q. Is this something that would have  
20 been sent out on or about August 2nd, 1999?

21 A. Again, based solely upon the  
22 header at the top of the page I would agree  
23 with you, but I don't know where -- I don't  
24 know whether that header is accurate or if --  
25 or not. I mean, I couldn't tell you without

1 Q. Okay. And when the Keating firm  
2 is involved in a merger, they don't write all  
3 of the necessary documents from scratch in each  
4 case, do they?

5 MR. BURKE: Objection. Calls for  
6 speculation. Overbroad.

7 A. No, not necessarily. Sometimes we  
8 do and sometimes we don't. Depends on what the  
9 need is.

10 Q. Okay. You maintain templates of  
11 sorts for use in various transactions; is that  
12 fair?

13 MR. BURKE: Objection.

14 A. Yes.

15 Q. And did you have a template for  
16 the OHSL-Provident merger where you could  
17 borrow from previously created documents?

18 MR. BURKE: A template? Objection  
19 to the -- I don't know what you mean by  
20 template.

21 MR. BRAUTIGAM: Well, the witness  
22 does, so that's what counts.

23 MR. BURKE: Objection to the  
24 question as vague and ambiguous.

25 A. Well, taking the word template to

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1 some additional information.

2 Q. Do you recognize the fax --

3 A. I'm not trying to be evasive, I'm  
4 just trying to help you.

5 Q. I understand. Do you recognize  
6 the fax number at the top of the document?

7 A. I think that's one of our law firm  
8 fax numbers, but I couldn't be -- I'm not sure.  
9 I can -- again, I can tell you if you wanted me  
10 to consult a telephone list.

11 Q. Does that appear to be the  
12 outgoing fax or the incoming fax?

13 A. I think that's the outgoing fax.

14 Q. Okay. And this document does  
15 relate to the OHSL-Provident merger, correct?

16 MR. BURKE: Objection. Asked and  
17 answered. He already told you what it is.

18 A. Yes, it appears to relate.

19 Q. Was this document on the computers  
20 or word processing system at KMK?

21 A. Well, again, first of all, it's  
22 not one document. It's stapled together as if  
23 it were one document, but, but it would appear  
24 to be excerpts from two different documents on  
25 our system.

1 mean were there prior examples of similar  
2 documents that we could draw upon in the course  
3 of drafting The Merger Agreement, yes, there  
4 were examples. How much of this document is  
5 comprised of previously prepared material  
6 versus originally prepared material, I have no  
7 recollection. Usually in a transaction of this  
8 nature, there are extensive provisions that  
9 have to be customized.

10 Q. So you take the template and you  
11 go in and customize it to a particular  
12 transaction. Is that right?

13 MR. BURKE: Objection.

14 A. Sometimes

15 Q. Is that what you did in this case?

16 A. I don't recall. I will sometimes  
17 draft these from scratch.

18 Q. Do you recall drafting the merger  
19 documents from scratch in this particular case?

20 A. I said I don't recall --

21 Q. Oh, okay.

22 A. -- one way or the other. When you  
23 say merger documents, are you talking about the  
24 agreement and plan of merger or are you talking  
25 about all of the other documents that were

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1 incident to this?

2 Q. Everything combined.

3 MR. BURKE: Objection, overbroad.

4 A. Mike, I don't recall which were  
5 originally drafted versus which came primarily  
6 from templates.

7 Q. Are you familiar with the Unitog  
8 transaction?

9 A. What do you mean by "familiar  
10 with"? I'm aware of the fact that Cintas and  
11 Unitog entered into an acquisition agreement  
12 sometime I think in '98 or '99, four or five  
13 years ago. But that -- I did not work on the  
14 transaction and I'm not familiar with the  
15 terms.

16 Q. Did Mr. Roe ever ask you to fax  
17 essentially template documents or documents  
18 that had been used before by KMK to him?

19 A. I don't recall.

20 Q. Let's take a look at what has  
21 previously been marked as Plaintiff's Exhibit  
22 8.

23 A. Okay. I just note for the record  
24 that I can't really read the first page, if  
25 there's anything on it.

1 speculation.

2 A. I do not know.

3 Q. Do you see that on Bates number  
4 25, it appears that United Bankshares is  
5 crossed out and OHSL is written in at various  
6 times?

7 A. Yes.

8 Q. Do you recognize the handwriting  
9 on this page?

10 A. I do not. I know it's not mine.

11 Q. Do you know if anyone at KMK sent  
12 Cliff Roe merger documents that KMK had used  
13 previously?

14 A. I do not know.

15 Q. Is Cliff Roe an expert in mergers  
16 and acquisitions in your mind?

17 MR. MAUNDRELL: Objection.

18 MR. BURKE: Objection. Calls for  
19 speculation. You may answer if you know.

20 A. I do not know.

21 Q. What was Mr. Roe's level of  
22 familiarity with mergers and acquisitions, in  
23 your opinion?

24 MR. MAUNDRELL: Objection to the  
25 form and foundation.

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1 Q. Could you take a few moments and  
2 review these pages to yourself, please?

3 A. All of them?

4 Q. I would suggest that you skim  
5 through them and then I can direct your  
6 attention to particular pages.

7 A. Okay. I've looked through the  
8 stack.

9 Q. Okay. Can I direct your attention  
10 to page 25 going by the Bates number, which is  
11 the number in the lower right-hand corner?

12 A. Twenty-five or 25B?

13 Q. Twenty-five.

14 A. Okay.

15 Q. Are you familiar with the  
16 transaction known as United Bankshares?

17 A. No.

18 Q. Did KMK ever work on a transaction  
19 involving United Bankshares?

20 A. I don't know.

21 Q. Let me represent that I believe  
22 these pages came from the files of Dinsmore.  
23 Do you know how this document would have gotten  
24 in Dinsmore's file?

25 MR. BURKE: Objection. Calls for

1 A. I had not dealt with Mr. Roe in a  
2 prior transaction, so I was not familiar with  
3 his level of expertise.

4 Q. Did you become familiar with his  
5 level of expertise in working with him on this  
6 transaction?

7 A. Only to a limited extent.

8 Q. Did you have a sufficient extent  
9 to form an opinion with respect to Mr. Roe's  
10 talents and abilities with respect to mergers  
11 and acquisitions?

12 A. My -- yes.

13 Q. What was that opinion?

14 A. My opinion was that he was doing  
15 his job competently.

16 Q. If Mr. Roe did not share with you  
17 material information, would that opinion  
18 change?

19 MR. MAUNDRELL: Objection.

20 MR. BURKE: Objection. Calls for  
21 speculation. Assumes facts not in evidence.  
22 You may answer.

23 A. Well, when you say "material  
24 information," are you talking material  
25 information about what? And material to whom?

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1 Q. Well, if Mr. Roe did not share  
2 with you information about dissent within  
3 OHSL's Board and within OHSL's management --

4 MR. MAUNDRELL: Objection.

5 Q. -- would you still consider him  
6 competent?

7 MR. MAUNDRELL: Objection.

8 Misrepresentation, mischaracterization of  
9 testimony and the facts.

10 MR. GILLIGAN: Are you asking this  
11 as an expert opinion answer?

12 MR. BRAUTIGAM: I'm asking his  
13 opinion as an attorney who worked on the  
14 merger.

15 THE WITNESS: Did I --

16 MR. GILLIGAN: As an area of  
17 expertise then. So go ahead if you have enough  
18 to give an expert opinion. That's what he's  
19 asking you.

20 MR. BRAUTIGAM: No, my questions  
21 stand as I phrase them. I don't need your  
22 help.

23 MR. GILLIGAN: Let me tell you  
24 something that you apparently haven't discerned  
25 yet I have a job here, okay? I don't know

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1 started earlier this morning to make that clear  
2 to you.

3 MR. BRAUTIGAM: Lou, we're doing  
4 fine. We don't need your help. We don't need  
5 your speaking objections.

6 MR. GILLIGAN: No, we're not doing  
7 fine. You see, that's the problem, we're not  
8 doing fine at all.

9 MR. BRAUTIGAM: You interrupted me  
10 again. Lou, my questions are clear. The  
11 witness can understand the questions and if he  
12 doesn't, he can tell me.

13 MR. GILLIGAN: Well, let me make  
14 something clear then. If you will not identify  
15 in your question whether you're asking him the  
16 question as an expert and asking for an expert  
17 opinion, then I'm going to instruct him not to  
18 answer, because that's the only recourse I have  
19 left.

20 MR. BRAUTIGAM: Lou, my question  
21 was clear. I'm happy to accommodate you.

22 BY MR. BRAUTIGAM:

23 Q. Mr. Matthews, my question goes to  
24 your opinion as an attorney who worked on the  
25 transaction. I'm not asking you for an expert

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1 about the merits of the case. I don't know  
2 necessarily what is relevant and what's  
3 irrelevant.

4 My objections don't go to that  
5 unless it's obvious. But Tim is here to be  
6 helpful. He's been helpful. He's answering  
7 your questions, but he is not a litigator. If  
8 you are asking a person an expert opinion  
9 question, he is entitled to know that.

10 I'm a litigator. I can't discern  
11 from your question, Mike, whether you're asking  
12 an expert opinion question or not. You're not  
13 asking him for facts he knows. You're asking  
14 him for some type of an opinion. You've  
15 established in the beginning of today that Tim  
16 feels that he has certain areas of expertise as  
17 a lawyer.

18 It is only fair for me to make a  
19 legitimate inquiry as to whether you're asking  
20 my client, this witness, an expert opinion  
21 question based upon his expertise. You can't  
22 possibly tell me there's anything wrong with my  
23 making that inquiry.

24 MR. BRAUTIGAM: Are you done?

25 MR. GILLIGAN: That's it, but I

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1 opinion in this area or that area yet. I may,  
2 just as an attorney who worked on the  
3 transaction. Okay. Are you with me?

4 A. Yes. And I think, Mike, what I  
5 haven't heard is enough information about the  
6 circumstances that you're hypothesizing may  
7 have occurred in order to provide you with an  
8 answer to that question.

9 Q. Okay.

10 A. Because it assumes facts that I  
11 don't have any knowledge about and other things  
12 that I may or may not know about. So this -- I  
13 can't answer that question.

14 Q. Okay. Fair enough. If Mr. Roe  
15 knew that Mr. Hanauer were opposed to the  
16 transaction but Mr. Roe did not share that with  
17 you, would that change your opinion as to Mr.  
18 Roe's competence?

19 MR. MAUNDRELL: Objection.

20 MR. BURKE: Objection. Assumes  
21 facts not in evidence. Misstates the record.  
22 Calls for speculation.

23 MR. MAUNDRELL: This witness is  
24 not required to answer questions in which the  
25 facts are basically false.



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1 MR. GILLIGAN: Mr. Matthews, if  
2 you can -- if you have enough to answer it,  
3 answer it. If you don't, just say you can't  
4 answer it as proposed and let's move on.  
5 That's the best I can suggest.  
6 A. Right. I -- with only the  
7 information contained in your question, Mike, I  
8 don't think there's enough information, facts  
9 and assumptions for me to answer that question.  
10 Q. Fair enough. What other  
11 information would you need in order to answer  
12 the question?  
13 MR. MAUNDRELL: You mean other  
14 than true facts, actual facts? Other than  
15 those, you mean? You know, rather than your  
16 basic misrepresentations which you're so used  
17 to doing? Other than those?  
18 MR. MESH: Is there a necessity  
19 for this --  
20 MR. MAUNDRELL: Yes.  
21 MR. MESH: -- constant harping.  
22 Mike?  
23 MR. MAUNDRELL: Yes, Gene, there  
24 is.  
25 MR. MESH: Why don't you take it

1 true.  
2 MR. MESH: Okay. In the meantime,  
3 can we move through the deposition?  
4 MR. MAUNDRELL: As long as I put  
5 my objections on.  
6 MR. MESH: And without criticism  
7 and without harping?  
8 MR. MAUNDRELL: I'm not coaching  
9 anybody. I would suggest that you talk with  
10 your fellow counsel and tell him that when he  
11 asks questions, that the questions should have  
12 some predicate of truth to them.  
13 MR. MESH: And I think he's doing  
14 just fine, Mike.  
15 MR. MAUNDRELL: I know you do.  
16 And I don't.  
17 MR. MESH: We have a difference of  
18 opinion.  
19 MR. MAUNDRELL: That is very true.  
20 MR. MESH: You have a right to act  
21 on it.  
22 MR. MAUNDRELL: Thank you, and I  
23 have.  
24 BY MR. BRAUTIGAM:  
25 Q. Can we have the last question read

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1 to the Court? That's what you're good at.  
2 MR. MAUNDRELL: True. Very true.  
3 Why don't you?  
4 MR. MESH: Why don't I?  
5 MR. MAUNDRELL: Why don't you? I  
6 know why you don't.  
7 MR. MESH: Why should I?  
8 MR. MAUNDRELL: I've made my  
9 record, I'm very happy with it.  
10 MR. MESH: You've been doing this  
11 since this case began.  
12 MR. MAUNDRELL: I will continue  
13 when there is blatant misrepresentation of  
14 facts, period.  
15 MR. MESH: You should put it in  
16 writing and put it before the Court or  
17 Magistrate  
18 MR. MAUNDRELL: I hope our  
19 competent court reporter is taking down what  
20 I'm saying so it is in writing.  
21 MR. MESH: And you're going to act  
22 on that, right?  
23 MR. MAUNDRELL: At some point in  
24 time with this Court or some other Court or  
25 some other administrative body, true. That is

1 back, please?  
2 A. That's not necessary. The fact  
3 that Mr. Roe might not have disclosed to me or  
4 to our firm circumstances about Mr. Hanauer's  
5 questions, whatever they might have been, about  
6 the transaction or reservations about the  
7 transaction would not necessarily have affected  
8 my opinion at all of his competence. And I --  
9 I stand on that without, without more.  
10 Q. If Mr. Roe knew that Mr. Herron  
11 resigned in part in protest of the  
12 OHSL-Provident merger, would you have expected  
13 him to share that information with you?  
14 MR. BURKE: That is an absolute  
15 mischaracterization of the record and assumes  
16 facts not in evidence. And that's -- and is  
17 directly contrary to Mr. Herron's deposition  
18 testimony in this matter. I object on that  
19 basis.  
20 MR. MAUNDRELL: I join in with  
21 that.  
22 A. No. I believe you told me that  
23 Mr. Herron had resigned prior to the meeting at  
24 which a vote was taken.  
25 Q. Well, I believe Mr. Herron's final

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1 act as a director of OHSL was voting against  
2 continued negotiations with Provident. And I  
3 further understand that the terms of the  
4 transaction did not change.

5 MR. BURKE: Objection. That's  
6 not --

7 MR. MAUNDRELL: Now you're  
8 arguing.

9 MR. GILLIGAN: Let's move on.

10 Q. Mr. Matthews, I hand you what has  
11 been previously marked as Plaintiff's  
12 Deposition Exhibit 46 and I ask you to take a  
13 look at it. I suggest you skim through that  
14 and look for the handwritten comments, as an  
15 initial matter.

16 A. Okay. I've skimmed through it.

17 Q. Have you seen Plaintiff's Exhibit  
18 46 before, the document with the handwriting?

19 A. No.

20 Q. Do you know whose handwriting that  
21 is?

22 A. No.

23 Q. Let me represent to you that the  
24 handwriting as it appears is Mr. Ken Hanauer's  
25 handwriting. Were you aware that a document

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1 MR. BRAUTIGAM: It sounded like  
2 you are.

3 MR. BURKE: That's an absolute  
4 mischaracterization.

5 MR. BRAUTIGAM: Jim, it's a little  
6 confusing with all of the KMK lawyers in the  
7 room.

8 MR. MAUNDRELL: What is confusing  
9 is your blatant misrepresentations.

10 MR. BRAUTIGAM: Would you please  
11 find the pending question?

12 (Record read by Reporter.)

13 MR. GILLIGAN: You can't answer  
14 the question as posed anyway.

15 MR. BURKE: Absolutely false.

16 THE WITNESS: That's not a  
17 question, is it?

18 MR. GILLIGAN: No, it's not. You  
19 can't answer it like that.

20 BY MR. BRAUTIGAM:

21 Q. Let me represent to you that Mr.  
22 Hanauer discussed with Mr. Roe most or all of  
23 the comments that are handwritten on this  
24 document. Would you have expected Mr. Roe to  
25 share with you Mr. Hanauer's discussion with

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1 such as this with Mr. Hanauer's handwriting  
2 existed?

3 A. No.

4 Q. I think it's fair to characterize  
5 the handwriting as issues that Mr. Hanauer had  
6 with the transaction and with the disclosure in  
7 Defendant's Exhibit 1.

8 MR. BURKE: Michael, I challenge  
9 you to find in Mr. Hanauer's deposition where  
10 he said that. He said exactly the opposite.  
11 You know that's not what he said. That's an  
12 absolute misrepresentation, Gene.

13 MR. MAUNDRELL: Gene, this is  
14 absolutely what I'm talking about.

15 MR. BRAUTIGAM: What do you  
16 believe he said?

17 MR. BURKE: I'm not going to get  
18 into a debate with you. But I'm telling you  
19 that that is an absolute mischaracterization of  
20 what he said. Find the portion of the  
21 deposition where he said that or I'm not going  
22 to allow the witness to answer that.

23 MR. BRAUTIGAM: Are you  
24 representing the witness, Jim?

25 MR. BURKE: No, I'm not.

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1 respect to the merger itself and the  
2 transactional documents?

3 MR. MAUNDRELL: Objection.

4 MR. BURKE: Objection.

5 A. No.

6 Q. Why not?

7 A. Because that conversation would  
8 presumably have been privileged and I would not  
9 have been a party to it, nor would I have  
10 expected Mr. Roe to share it with me.

11 Q. If it related to Mr. Hanauer  
12 writing down material misrepresentation in the  
13 proxy materials, would you have expected that  
14 information to be shared with you?

15 MR. BURKE: Objection. Assumes  
16 facts not in evidence. That's a direct  
17 mischaracterization of Mr. Hanauer's testimony.

18 MR. MAUNDRELL: Ditto.

19 MR. BRAUTIGAM: I just want the  
20 record to be clear that at page OHSL 03187, in  
21 Mr. Hanauer's handwriting it says, misstatement  
22 of material fact.

23 MR. BURKE: Do you know where this  
24 came from, Mr. Brautigam? Because I will tell  
25 you, and I'm now looking at exactly where it

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1 came from from Mr. Hanauer's deposition.  
 2 MR. BRAUTIGAM: Jim, don't point  
 3 your finger at me.  
 4 MR. BURKE: You are  
 5 misrepresenting that that came from Mr. Hanauer  
 6 and you know it didn't.  
 7 MR. MAUNDRELL: You absolutely  
 8 know it didn't.  
 9 MR. BRAUTIGAM: I am representing  
 10 that Mr. Hanauer wrote that down.  
 11 MR. BURKE: And you know he's not  
 12 the source of it.  
 13 MR. BRAUTIGAM: I am representing  
 14 that Mr. Hanauer wrote it down and that he  
 15 discussed it with Mr. Roe. That's what I'm  
 16 representing.  
 17 MR. BURKE: Okay.  
 18 MR. BRAUTIGAM: That's the extent  
 19 of my representation, for the record.  
 20 MR. BURKE: Okay.  
 21 MR. BRAUTIGAM: Mr. Hanauer wrote  
 22 it down, Mr. Hanauer discussed it with Mr. Roe.  
 23 That's the extent of my representation.  
 24 MR. BURKE: Okay. And you know  
 25 that that was not from Mr. Hanauer, nor were

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1 Board or other officers of OHSL, as well as  
 2 other members of his law firm, to have  
 3 evaluated these various comments and disposed  
 4 of them accordingly.  
 5 Q. If Mr. Roe became aware of the  
 6 material misrepresentation in the proxy  
 7 materials, would you have expected him to share  
 8 that with you in some fashion?  
 9 MR. MAUNDRELL: Objection. Calls  
 10 for speculation and a legal conclusion.  
 11 A. Prior to the vote of the  
 12 shareholders?  
 13 Q. Yes.  
 14 A. Prior to the finalization of the  
 15 proxy or after it?  
 16 Q. At any point up to and including  
 17 December 3rd, 1999.  
 18 MR. MAUNDRELL: Objection.  
 19 A. And in his opinion, are you  
 20 talking about if Mr. Roe had reached a  
 21 conclusion that there was a material  
 22 misrepresentation in the proxy?  
 23 Q. Yes.  
 24 A. I would think that he would share  
 25 that with us.

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1 they his thoughts. They were someone else's  
 2 thoughts, correct?  
 3 MR. MAUNDRELL: And that's a fact.  
 4 MR. BRAUTIGAM: I don't agree with  
 5 that entirely. Anyway, can I have my question  
 6 read back, please?  
 7 (Record read by Reporter.)  
 8 MR. BURKE: Same objection,  
 9 mischaracterizes the facts.  
 10 MR. MAUNDRELL: Ditto.  
 11 A. Not necessarily.  
 12 BY MR. BRAUTIGAM:  
 13 Q. If you had known this document  
 14 existed, would you have wanted to discuss it  
 15 with someone?  
 16 MR. MAUNDRELL: Objection.  
 17 MR. BURKE: Objection.  
 18 A. No, not necessarily. Again, you  
 19 told me that this is a document that was  
 20 communicated to Mr. Roe by his client or by a  
 21 representative of his client. And I would not  
 22 have expected these matters to have been  
 23 discussed or disclosed to me.  
 24 I would have expected that Mr.  
 25 Roe, in consultation with other members of the

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1 Q. Are you aware that a federal Judge  
 2 has reached the conclusion that there may be  
 3 material misstatements in the proxy materials  
 4 and registration statement?  
 5 MR. BURKE: That's not --  
 6 A. I'm not aware of what any Judge  
 7 may have concluded in this case.  
 8 MR. MAUNDRELL: That is a false  
 9 statement totally.  
 10 MR. GILLIGAN: He's answered  
 11 anyway.  
 12 MR. BRAUTIGAM: Let's take a short  
 13 break.  
 14 (Brief recess.)  
 15 BY MR. BRAUTIGAM:  
 16 Q. Okay. Let's take a look at what  
 17 has been previously marked as Plaintiff's  
 18 Exhibit 28. It's hard to read, but it is 28.  
 19 A. Do you want me to read this?  
 20 Q. Why don't you take a look at it  
 21 and I can direct your attention to certain  
 22 paragraphs.  
 23 A. Okay. Which paragraphs?  
 24 Q. Well, why don't you read it  
 25 yourself, starting on page 17.

50 (Pages 194 to 197)

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1 MR. BURKE: Objection, foundation.  
 2 Document speaks for itself. While he's reading  
 3 that, Mike, I will note for the record that  
 4 starting at page 153, about line 13 or 14 of  
 5 Mr. Hanauer's deposition, proceeding through  
 6 page 165 or 166 is a detailed discussion of the  
 7 source of those comments and makes it very  
 8 clear that some of the questions that you  
 9 previously posed mischaracterized the record as  
 10 far as Mr. Forrester being the source of those  
 11 comments and Mr. Hanauer's opinion of them. So  
 12 I'll just note that for the record that that's  
 13 where you can find the correct testimony.

14 MR. BRAUTIGAM: Well, thank you  
 15 for sharing. I do not believe that I  
 16 misrepresented the record. I did not intend to  
 17 misrepresent the record. It's a thousand pages  
 18 of Hanauer's deposition and I believe that I  
 19 stated clearly that Mr. Hanauer wrote down  
 20 these comments, which is correct. And Mr.  
 21 Hanauer discussed the majority, if not each and  
 22 every one, with Mr. Roe. That was my  
 23 representation and I believe it is correct.

24 MR. MESH: Is there a question  
 25 pending?

1 speculation on a document he's never seen  
 2 before. No foundation.

3 MR. MAUNDRELL: In addition, this  
 4 has been asked and answered at least three  
 5 times by this particular witness in perhaps  
 6 different phraseology, but the exact same  
 7 point.

8 MR. GILLIGAN: Well, it's --  
 9 you're basically putting him in a position of  
 10 rendering an expert opinion and testimony that  
 11 is contrary to a holding of the Judge in this  
 12 case. That's what you're asking him to do.

13 I don't think that's appropriate.  
 14 Why put this man in that position? I mean,  
 15 you're giving him a decision by the Judge,  
 16 which is the law of this case, and asking him  
 17 to disagree with the Judge or agree with the  
 18 Judge? That's totally unfair. That's  
 19 improper. I instruct him not to answer.

20 MR. BRAUTIGAM: And what's the  
 21 basis of the instruction?

22 MR. GILLIGAN: I just gave it to  
 23 you.

24 MR. BRAUTIGAM: It's unfair and  
 25 improper?

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1 MR. BRAUTIGAM: No, he's reading.  
 2 MR. BURKE: He's reading the  
 3 12(B)(6) decision.

4 MR. MESH: All right, excuse me.  
 5 THE WITNESS: Okay. I've skimmed  
 6 up to page 24, which is the next section.

7 MR. BRAUTIGAM: Okay.  
 8 THE WITNESS: Do you want me to  
 9 read beyond that?

10 MR. BRAUTIGAM: No.

11 BY MR. BRAUTIGAM: ~~Q~~

12 Q. Can I direct your attention to  
 13 page 20? Toward the bottom of the page,  
 14 there's a section three, Unanimity of OHSL's  
 15 Board. There's a sentence that begins in the  
 16 extreme right. Therefore, the Court finds at  
 17 least at the pleading stage that a reasonable  
 18 shareholder might find dissent among the Board  
 19 of Directors important to the mix of  
 20 information available.

21 Now, do you agree with that part  
 22 of the sentence, that a reasonable shareholder  
 23 might find dissent among the Board of Directors  
 24 important to the mix of information available?

25 MR. BURKE: Objection. Calls for

1 MR. GILLIGAN: Yes.

2 MR. BRAUTIGAM: That's not an  
 3 appropriate basis.

4 MR. GILLIGAN: Great. Take it to  
 5 the Bar Association and take it to the Judge.  
 6 I've asked you to do that, please do. And  
 7 don't you ever, ever again accuse me of  
 8 unethical conduct and don't make an ad hominem  
 9 comment about me when I ask to see a document,  
 10 that I haven't prepared for the deposition. No  
 11 one in 32 years has ever accused me of any of  
 12 those things. Nobody has done that, and I'll  
 13 tell you that right now.

14 MR. MESH: Both sides

15 MR. GILLIGAN: You, Mr. Mesh, know  
 16 that. And that's nonsense, so you either get  
 17 this guy straightened out or I will walk out of  
 18 here. Don't you make any ad hominem remarks  
 19 about --

20 MR. MESH: Lou, we've had a few  
 21 from you.

22 MR. GILLIGAN: I don't care, Gene,  
 23 this is me. This is a personal attack and  
 24 remarks about me.

25 MR. MESH: This whole case has

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1 been full of that. It should be out.  
 2 MR. GILLIGAN: You hear what I  
 3 have to say.  
 4 MR. BURKE: I second that, Gene.  
 5 MR. MESH: And I personally  
 6 apologize to you for anything that would  
 7 resemble an aspersion on you, because I know  
 8 the --  
 9 MR. GILLIGAN: Did you hear the  
 10 comment he made when you walked out of the  
 11 room?  
 12 MR. MESH: No, I did not hear it.  
 13 MR. GILLIGAN: Well, that's what  
 14 he made the comment on, so I have instructed  
 15 him not to answer. Let's move on.  
 16 MR. BRAUTIGAM: I want the record  
 17 to reflect that you're yelling, screaming and  
 18 pounding on the table.  
 19 MR. GILLIGAN: I did. I banged my  
 20 hand on the table and raised my voice,  
 21 absolutely.  
 22 MR. BRAUTIGAM: And you pointed  
 23 your finger at me.  
 24 MR. GILLIGAN: Yes, I did. And I  
 25 told you not to do that.

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1 MR. BRAUTIGAM: I want the record  
 2 to be clear that I did not make any personal  
 3 attacks on you in any way.  
 4 MR. MAUNDRELL: That's a lie.  
 5 MR. BURKE: That's not true. You  
 6 were off the record, but that is not true.  
 7 MR. BRAUTIGAM: I disagree with  
 8 your comments, Mr. Burke, but are not surprised  
 9 that you agree with your partner.  
 10 MR. BURKE: Let's move on, please,  
 11 Mr. Brautigam.  
 12 BY MR. BRAUTIGAM:  
 13 Q. Mr. Matthews, if I continue to ask  
 14 questions on this order, are you going to  
 15 continue to answer them?  
 16 MR. BURKE: Objection to form. I  
 17 don't know what you're talking about.  
 18 A. If I'm instructed on a particular  
 19 question not to answer it, I will follow the  
 20 advice of my question.  
 21 MR. BRAUTIGAM: Mr. Gilligan, if I  
 22 continue to ask questions with respect to this  
 23 order, are you going to instruct him not to  
 24 answer those questions?  
 25 MR. GILLIGAN: You ask the

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1 questions and I'll take them as they come. If  
 2 you do it on the same basis that you just did,  
 3 I'll instruct him not to answer.  
 4 MR. BRAUTIGAM: Well, can we skip  
 5 this meaningless exercise then and move on to  
 6 another document?  
 7 MR. GILLIGAN: Do whatever you  
 8 want.  
 9 BY MR. BRAUTIGAM:  
 10 Q. Put that document away. I'm  
 11 handing you what has been previously marked as  
 12 Plaintiff's Exhibit 42 and I ask you to take a  
 13 look at it.  
 14 A. Okay. I've briefly paged through  
 15 it.  
 16 Q. Have you seen this document  
 17 before?  
 18 A. Yes.  
 19 Q. Are you familiar with it?  
 20 A. At the present time I am not.  
 21 Q. Do you recognize it?  
 22 A. Yes.  
 23 Q. What is Plaintiff's Exhibit 42?  
 24 A. It looks like an interim  
 25 distribution of the form S-4 while it was in

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1 the drafting stage.  
 2 Q. What is a form S-4?  
 3 A. It's a type of registration  
 4 statement.  
 5 Q. And what is being registered?  
 6 A. Provident securities.  
 7 Q. And were these the Provident  
 8 securities --  
 9 A. PFGI securities, actually.  
 10 Q. And were these the PFGI securities  
 11 that were used to compensate the OHSL  
 12 shareholders for their stock if the merger were  
 13 approved?  
 14 A. Yes.  
 15 Q. There's a distribution list on the  
 16 second and third page. Do you see that?  
 17 A. Yes.  
 18 Q. What is the purpose of this  
 19 distribution list?  
 20 A. To put the document in the hands  
 21 of people that would have an interest or need  
 22 to review it.  
 23 Q. Was it understood that the people  
 24 on the distribution list would review the  
 25 documents that were attached?



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1 A. In, in pertinent part, yes.

2 Q. Okay. What was Mr. Carey's role  
3 with respect to the merger transaction in  
4 general?

5 A. Mr. Carey was the executive vice  
6 president and chief financial officer of  
7 Provident Bank and would have been familiar  
8 with, you know, certain of the information that  
9 was provided in the document, including the  
10 financial information.

11 Q. What was Mr. Magee's role in this  
12 document?

13 A. Mr. Magee was at that time, I  
14 believe, the senior counsel in-house for the  
15 Provident Bank, general counsel. And he is the  
16 -- he is the individual who engaged us to  
17 assist with the transaction in the first  
18 instance.

19 Q. What was Mr. Farrenkopf's role in  
20 the transaction?

21 A. John Farrenkopf participated in  
22 various aspects of the transaction, including a  
23 number of the due diligence responsibilities  
24 for the bank.

25 Q. What is due diligence?

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1 A. Due diligence is a process by  
2 means of which a party to a transaction learns  
3 information that, you know, that is relevant to  
4 the way the transaction may be structured or  
5 concluded.

6 Q. Did KMK undertake due diligence in  
7 this case?

8 MR. BURKE: Objection. Vague,  
9 ambiguous, overbroad.

10 A. Some.

11 Q. What due diligence did KMK  
12 perform?

13 A. KMK would have, or did examine the  
14 structure of the target company, which was a  
15 parent subsidiary company, so as to become  
16 informed as to how to structure the transaction  
17 in a way that would, would hopefully comply  
18 with Section 368 of the Internal Revenue Code  
19 and make the transaction a tax-free  
20 reorganization.

21 In addition, KMK would have been  
22 involved in -- or was involved in the process  
23 of, you know, negotiating and discussing issues  
24 with counsel to OHSL that would have been, you  
25 know, important issues to confirm about the

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1 company prior to consummating a merger.

2 KMK also looked at the good  
3 standing of the respective organizations of the  
4 companies -- there are, I think, three or four,  
5 I don't recall exactly how many, different  
6 corporate enterprises that were involved in the  
7 transaction. I know there was a parent, a  
8 subsidiary, and at least one other company.

9 I don't remember if there were  
10 more than three, but we would have examined  
11 state records to determine whether those  
12 companies were in good standing so that our  
13 merger could be effectuated properly.

14 We would have made inquiries to  
15 counsel for OHSL regarding the matters required  
16 for disclosure in the proxy statement and  
17 prospectus, although I was not personally  
18 involved in that process, but those are some of  
19 the kinds of things that we would have done as  
20 part of our diligence.

21 Q. I notice that there is a provision  
22 in The Merger Agreement for an exchange of  
23 information between OHSL and Provident. Does  
24 that sound familiar to you?

25 A. Yes.

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1 Q. And does it specifically call for  
2 access to the Board minutes of the respective  
3 companies?

4 A. I don't recall. It might have,  
5 but I don't recall.

6 Q. Is this common to find in such  
7 merger agreements?

8 MR. BURKE: Objection. Asked and  
9 answered.

10 A. Common, yes.

11 Q. Why is it common to find in merger  
12 agreements?

13 MR. BURKE: I'm sorry, can you  
14 read that back, please?

15 (Record read by Reporter.)

16 MR. BURKE: Objection. You may  
17 answer it.

18 A. Well, there's almost always in an  
19 acquisition agreement a provision that permits  
20 an acquiring company to have access to  
21 information about the other company on a wide  
22 range of topics. And depending on the nature  
23 of the transaction, there may be deeper or not  
24 quite as deep inquiries into a whole, large  
25 number of areas, such as, you know, how the

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1 employee benefits are structured, whether  
2 there's outstanding litigation.

3 There may -- there may be -- an  
4 acquirer might want to physically inspect  
5 assets of the company if the physical assets  
6 are important. They might want to read the  
7 contracts relating to the company. There are a  
8 number of things. And so generally speaking,  
9 you would have a provision in an acquisition  
10 document that would permit an acquirer to have  
11 access to the target company's books, records,  
12 physical assets, plants, facilities, contracts,  
13 corporate records, and things of that nature.

14 Q. Did this merger close with  
15 litigation pending against Provident?

16 A. I don't know.

17 Q. Is it common to close a merger  
18 with litigation pending?

19 A. It happens. I, I -- I would say  
20 it's not common.

21 Q. Have you ever done it at any point  
22 in your career other than this case?

23 MR. BURKE: Objection, overbroad.  
24 Calls for speculation. Assumes facts not in  
25 evidence. You may answer.

1 talking about litigation against the merger  
2 transaction itself.

3 A. I would say that's relatively  
4 uncommon, but it does happen.

5 Q. Okay. Did you discuss with anyone  
6 whether or not the merger should close with  
7 litigation pending in this case?

8 MR. BURKE: Objection.

9 MR. GILLIGAN: If as an attorney  
10 in dealing with your clients on attorney-client  
11 privilege, then don't disclose the answer --  
12 don't answer the question.

13 A. I did not. I had no such  
14 discussions.

15 Q. What was Mr. Richard Hanebutt's  
16 role in this transaction?

17 A. Mr. Who?

18 Q. Hanebutt, lower left.

19 A. I don't recall.

20 Q. What was Mr. Robert Litzinger's  
21 role in this transaction?

22 A. I don't remember.

23 Q. What was Tony Stollings' role in  
24 this transaction?

25 A. Tony is in the finance department

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1 A. Yes.

2 Q. Approximately how many times?

3 A. Probably four or five.

4 Q. In this particular case, were  
5 there ever any discussions as to whether or not  
6 this transaction should close with litigation  
7 pending?

8 MR. BURKE: Objection to the  
9 extent it calls for attorney-client privileged  
10 information.

11 A. Now, what kind of -- let me back  
12 up. What kind of litigation pending are we  
13 talking about here? Because there are many  
14 transactions closed with the target company  
15 being involved in some litigation. I took your  
16 question to mean that we're talking about  
17 litigation concerning the transaction itself.

18 Q. Yes. That's correct.

19 A. And that's the context in which I  
20 answered it. But there are many situations in  
21 which you have litigation pending against one  
22 or both of the companies and you close. And I  
23 would say that's extremely common.

24 Q. Well, I'm not talking about a slip  
25 and fall case or a car accident type case. I'm

1 of the bank. And he reviewed some of the  
2 financial information, both being provided by  
3 Provident as well as OHSL Financial  
4 information.

5 Q. What was Ken Hanauer's role in the  
6 transaction?

7 MR. BURKE: Objection. Calls for  
8 speculation. You may answer.

9 A. I didn't have any direct contact  
10 with Mr. Hanauer.

11 Q. Do you have an understanding of  
12 what the CEO of the target company's role is in  
13 effectuating the merger?

14 MR. BURKE: Objection. Calls for  
15 speculation. Relevance.

16 A. You mean as a general matter?

17 Q. Yes.

18 A. Not in this specific instance?

19 Q. Yes.

20 A. Yes.

21 Q. Okay. What is your understanding  
22 of that role as a general matter?

23 A. Well, I've -- like other executive  
24 officers in the transaction, if the Board of  
25 Directors has undertaken to engage in a

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1 transaction, the officers would be there to  
2 serve to facilitate the transaction. And they  
3 would be -- have a responsibility to the  
4 company to, to comply with the directions of  
5 the Board of Directors and to cooperate as the  
6 contract requires for the exchange of  
7 information. And there may be other roles,  
8 too, but those are some of the roles.

9 Q. Did you ever learn from any source  
10 that Mr. Hanauer was not fully cooperating in  
11 effectuating the merger?

12 A. No.

13 Q. If Mr. Hanauer did not believe  
14 that this transaction was in the best interest  
15 of OHSL shareholders, do you believe that he  
16 had an obligation to tell someone about his  
17 position?

18 MR. BURKE: Objection. Asked and  
19 answered at least half a dozen times.

20 MR. MAUNDRELL: Objection.

21 MR. BURKE: Calls for speculation.

22 A. I can't speak as to his legal  
23 obligations. That would be something that  
24 maybe someone more familiar with his  
25 circumstances could tell you.

1 Q. Did you negotiate personally with  
2 Mr. Moritz?

3 A. No.

4 Q. You did testify that you  
5 negotiated with Cliff Roe, correct?

6 A. Yes.

7 Q. And do you know who Cliff Roe  
8 represented?

9 A. Yes.

10 Q. Who did he represent?

11 A. I understood him to represent OHS  
12 Financial.

13 Q. OHSL?

14 A. Or OHSL Financial, right.

15 Q. That's the parent company, is that  
16 correct?

17 A. Right.

18 Q. And did Mr. Roe represent the  
19 directors of OHSL?

20 MR. BURKE: Objection. Calls for  
21 speculation.

22 A. I did not under -- I did not  
23 understand him to represent the directors, no.

24 Q. Did anyone represent the directors  
25 of OHSL in this merger, as far as you know?

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1 Q. What was the role of McDonald  
2 Investments in this transaction?

3 A. That was the investment banking  
4 firm hired by OHSL to represent them in  
5 connection with the transaction to solicit  
6 interest in OHSL and to render a fairness  
7 opinion in connection with the transaction.

8 Q. And soliciting interest is  
9 sometimes known as shopping a company?

10 A. Yes.

11 Q. And what was Mr. Crowley's  
12 particular role in effectuating the merger?

13 A. Beyond what I've already said?

14 Q. Well, you talked about McDonald  
15 Investment's role. Did he have a particular  
16 role within the rubric of McDonald's?

17 A. I don't really know what his, if  
18 he -- I don't -- if your question is, did he  
19 have distinct responsibilities within McDonald  
20 that were different from, from Jeff Moritz?

21 Q. Right.

22 A. I don't know.

23 Q. Okay. Did you negotiate  
24 personally with Mr. Crowley?

25 A. No.

1 MR. BURKE: Objection. Calls for  
2 speculation. Assumes facts not in evidence,  
3 foundation.

4 A. I do not recall.

5 Q. What was Mr. Hertlein's role in  
6 this merger?

7 A. My understanding was that he was  
8 involved on the -- in some of the securities  
9 laws aspects of the transaction as distinct  
10 from The Merger Agreement itself.

11 Q. When you say "some of the  
12 securities laws," which ones are you referring  
13 to?

14 A. Well, just as -- just as when the  
15 acquisition document was completed and signed,  
16 I stepped aside from the transaction and Mark  
17 Weiss and others in our securities department  
18 worked on it, it was my impression that Cliff  
19 Roe had similarly delegated to Mr. Hertlein  
20 responsibility for handling some of the  
21 securities aspects of the transaction.

22 Q. So would it be fair to say that  
23 you were involved more heavily before August  
24 2nd, 1999, and then you handed off the  
25 finalization of the merger to Mark Weiss in

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1 large part?

2 A. No. I don't think that's exactly  
3 correct, but the degree of my involvement did  
4 change dramatically after Mark became involved,  
5 because the preparation of the proxy statement  
6 and prospectus was a matter within his  
7 expertise and not mine. And so from the  
8 standpoint of that particular part or phase of  
9 the transaction, he was more heavily involved,  
10 much more so than I.

11 Q. Did Mark Weiss work with Cliff Roe  
12 or Charles Hertlein extensively in the  
13 preparation of the proxy materials?

14 MR. MAUNDRELL: Objection. Form,  
15 foundation.

16 A. Yes.

17 Q. Was he the person with the overall  
18 responsibility -- he meaning Mark Weiss -- for  
19 finalizing the proxy materials and registration  
20 statement?

21 MR. BURKE: Objection. Calls for  
22 speculation. He'll be here tomorrow.

23 A. No. I think that it was a  
24 collaborative effort. I believe I've testified  
25 to that previously, that this was an effort

Page 220

1 capacity, he was there to consult with if  
2 questions came up.

3 Q. Okay. I think I've asked you  
4 about the remaining KMK attorneys. Could I  
5 direct your attention to page 48 of the  
6 document, please, where it says the number of  
7 directors?

8 A. Right. Part of mine is obscured  
9 with a black mark.

10 Q. Right. Well, the part that I'm  
11 interested in is below that.

12 A. Okay.

13 Q. The last sentence of the second  
14 paragraph in that section says, The OHSL Board  
15 of Directors has set the current number of  
16 directors at eight.

17 A. Um-hmm.

18 Q. Does that mean that the bylaws of  
19 the OHSL provided for eight directors at that  
20 time?

21 MR. BURKE: Objection, foundation.

22 MR. MAUNDRELL: Objection,  
23 foundation. Document speaks for itself as  
24 well.

25 MR. BURKE. It also calls for

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1 that required cooperation on the part of both  
2 of the law firms involved, as well as the  
3 principals themselves, the knowledgeable  
4 officers and directors.

5 Q. Was a committee ever formed to  
6 effectuate the merger?

7 MR. BURKE: Committee?

8 A. A committee of whom? By whom?

9 Q. Of anyone involved with the  
10 merger, for example, KMK attorneys, Dinsmore  
11 attorneys, Provident people.

12 MR. BURKE: A committee?

13 Q. Yes.

14 MR. BURKE: Objection to form. I  
15 have no idea what that means.

16 A. Yes. I don't know really what you  
17 mean, either. I -- not to my knowledge, but  
18 there could have been.

19 Q. Okay. What was Mr. Kreider's role  
20 with respect to this merger?

21 A. Minimal. He was the -- as, again,  
22 I've testified previously, he was the head of  
23 the securities department.

24 Q. Right.

25 A. And so as a -- in an oversight

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1 speculation on the part of this witness. He's  
2 already testified to his role in this matter.

3 A. No, it does not mean that.

4 Q. Does that mean that there are  
5 eight directors -- eight OHSL directors at this  
6 time?

7 A. No.

8 MR. MAUNDRELL: Objection.

9 Q. What does it mean?

10 A. It means that, you know, one or  
11 more of the charter documents of the company,  
12 that is OHSL, permit the -- well, actually it  
13 says in the first sentence, certificate of  
14 incorporation. It says that the Board of  
15 Directors has the ability from time to time to  
16 determine how many directors there should be.  
17 And, therefore, the Board has the ability to  
18 change that.

19 I don't know what further  
20 limitations there might have been. That would  
21 be speculation on my part, but sometimes there  
22 are minimums and maximums, but the certificate  
23 of incorporation permits the Board to set by  
24 resolution the number of directors.

25 And the fact that the Board has

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1 set the number of directors at eight does not  
2 mean that there are necessarily eight serving  
3 actively at a given time, because you can  
4 always have vacancies.

5 Q. If there's a vacancy on the Board,  
6 do you believe it should be disclosed to the  
7 OHSL shareholders?

8 MR. MAUNDRELL: Objection. Asked  
9 and answered.

10 A. No.

11 Q. Okay. You can put that document  
12 to the side for a moment. Let's take a look at  
13 what has previously been marked as Plaintiff's  
14 Exhibit 16.

15 A. Mine is stapled on both ends so I  
16 can't open it. Okay. I've paged through it.

17 Q. Okay. Mr. Matthews, I think it's  
18 fair to say that Plaintiff's Exhibit 42  
19 provides a draft of some merger related  
20 documents and calls for comments --

21 A. I see Plaintiff's Exhibit 16 on  
22 the first page.

23 Q. Right. Well, what I was saying  
24 was, Plaintiff's Exhibit 42 calls for comments  
25 to be made

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1 speculation, foundation.

2 A. Are you assuming that there was a  
3 procedure or that there should have been a  
4 procedure?

5 Q. Was there a procedure to share  
6 this document with members of the distribution  
7 list?

8 A. There would have been no reason to  
9 necessarily do that, so I -- no, I would say  
10 that there wasn't.

11 Q. Okay. What do you believe  
12 happened when this document was hand delivered  
13 to Mark Weiss?

14 MR. MAUNDRELL: Objection.

15 MR. BURKE: Objection to  
16 foundation. Calls for speculation.

17 A. I believe Mark would have taken  
18 this document and disposed of each of the  
19 comments in a way that he felt was prudent. In  
20 some cases discussing it with Provident people,  
21 in some cases discussing it with other lawyers  
22 in the firm, and in other cases going back to  
23 OHSL's attorneys and discussing comments with  
24 them.

25 Q. Did he ever discuss any of these

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1 A. That's not marked on mine.

2 Q. Well, it is 42.

3 A. Are you referring to this document  
4 that begins at the bottom KMK 03960?

5 Q. Yes.

6 A. Okay.

7 Q. And my question is, KMK calls for  
8 comments with respect to the attached document.  
9 And in Plaintiff's Exhibit 16, they receive  
10 comments: is that fair?

11 A. Well, that's certainly what it  
12 appears, yes.

13 Q. Okay. Now, on Plaintiff's Exhibit  
14 16, which is the document you have in front of  
15 you, it appears that it was hand delivered to  
16 Mark Weiss. Do you see that?

17 A. I do.

18 Q. And the document states that it  
19 contains handwritten comments from Pat Condren  
20 and Ken Hanauer. Do you see that?

21 A. That I see, yes.

22 Q. Okay. What was the procedure for  
23 sharing this document with the distribution  
24 list when it was received by Mark Weiss at KMK?

25 MR. BURKE: Objection. Calls for

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1 comments with you?

2 A. I don't think so.

3 Q. Can I direct your attention to  
4 page 151 by Bates number in the lower right?

5 A. Okay.

6 Q. Do you ever recall looking at this  
7 page with the handwritten notes?

8 A. I do not recall.

9 Q. Do you ever recall discussing with  
10 anyone the fact that Mr. Herron had resigned  
11 from the OHSL Board?

12 MR. BURKE: Objection. Asked and  
13 answered. You may answer it.

14 A. Yes.

15 Q. And that's with Cliff Roe?

16 A. Well, I, I said it was -- I

17 thought it was either with Cliff or Charles  
18 Crowley.

19 Q. Okay. And that's just one  
20 discussion?

21 A. Yes.

22 Q. Okay. Other than that discussion,  
23 do you remember any other discussions about Mr.  
24 Herron's resignation?

25 A. No.



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1 Q. Do you remember any discussions  
2 about how the date July 31st, 1999, that  
3 appears on this page, was selected?  
4 MR. BURKE: Objection. Asked and  
5 answered.  
6 A. No.  
7 Q. Do you ever remember receiving a  
8 copy of this document yourself, Plaintiff's 16?  
9 A. No.  
10 Q. Do you believe that you would have  
11 received a copy of Plaintiff's Exhibit 16 in  
12 the normal course of business?  
13 MR. BURKE: Objection. Calls for  
14 speculation.  
15 A. No.  
16 Q. Okay. You can put that aside for  
17 the moment. Let me hand you what has been  
18 previously marked as Plaintiff's Exhibit 23.  
19 A. Okay.  
20 Q. Have you seen this document  
21 before?  
22 A. I don't have a specific  
23 recollection of this document.  
24 Q. Okay. That was all --  
25 A. I see that my name is on the

1 extent. I don't think that some of these  
2 people would have spent any appreciable time on  
3 this.  
4 Q. Okay. We talked about Mr. Kreider  
5 and Mr. Rosenberg being very senior people in  
6 their departments.  
7 A. I doubt that they spent any time  
8 looking at this, but that's purely speculation.  
9 Q. Okay. If they did, they would  
10 have billed for their time, correct?  
11 MR. MAUNDRELL: Objection.  
12 MR. BURKE: Objection.  
13 A. I don't know.  
14 Q. During the time you worked on this  
15 transaction, did you take notes?  
16 A. Oh, I'm sure I did.  
17 Q. Did you send e-mails?  
18 A. Again, I'm sure I did. I don't  
19 have any specific recollection as to the  
20 content of those e-mails, but --  
21 Q. At any point after litigation was  
22 instigated in any OHSL-Provident merger related  
23 cases, were you asked to preserve your notes?  
24 MR. BURKE: Objection. Time  
25 frame

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1 distribution list.  
2 Q. Right.  
3 A. But I do not specifically recall  
4 this document.  
5 Q. Right. A long time ago. Do you  
6 believe that you received this document?  
7 A. Yes.  
8 Q. What was the purpose for this  
9 document being circulated to the distribution  
10 list?  
11 MR. BURKE: Objection. Calls for  
12 speculation. You may answer.  
13 A. Being on the distribution list, I  
14 would say the purpose is as stated in the cover  
15 letter.  
16 Q. And that is essentially to  
17 facilitate the finalizing of the document,  
18 right?  
19 A. Right, because of the fact that  
20 there were blanks in the document.  
21 Q. Was it your expectation that  
22 everyone who received this on the distribution  
23 list reviewed it to some extent?  
24 A. When you say "reviewed," I think  
25 everybody would have taken note of it to some

1 MR. GILLIGAN: Don't refer to any  
2 conversations with counsel.  
3 A. Well, maybe this will help you  
4 understand. I don't keep any personal notes  
5 with regard to any client matters, so to the  
6 extent that any of my notes existed and were in  
7 the files, I don't keep either the notes or the  
8 physical files, okay, so --  
9 Q. Whatever notes you --  
10 A. I would not have had possession of  
11 any notes. And I don't recall being asked  
12 about notes, because I didn't have any notes.  
13 Q. Okay. So whatever notes you had  
14 went in the file, the file went off to the  
15 filing system somewhere?  
16 A. Right.  
17 Q. And after litigation was  
18 instituted, do you ever recall being asked to  
19 preserve or to produce materials related to the  
20 litigation?  
21 MR. GILLIGAN: Well, those are two  
22 different questions. Were you asked to  
23 preserve?  
24 Q. Okay.  
25 MR. GILLIGAN: Or to produce?

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1 Q. Yes.

2 MR. GILLIGAN: Do you want to take  
3 it one at a time?

4 A. Well, I don't have a recollection  
5 as to whether I was asked to -- it probably  
6 would -- again, would have been pretty  
7 insignificant to me because I don't keep them  
8 anyway, so I -- I wouldn't have had anything to  
9 preserve or to produce.

10 Q. Well, I was down at KMK the other  
11 day --

12 A. Yes.

13 Q. -- looking at documents.

14 A. Um-hmm.

15 Q. And I came across an e-mail from  
16 someone at Provident going out to I guess  
17 everyone. And it said, please preserve all of  
18 the documents related to the restatement,  
19 interpret this as broadly as possible. Do you  
20 ever recall seeing anything at KMK similar to  
21 that?

22 A. I don't recall, no.

23 Q. I think I have a clear  
24 understanding of what happened to your notes  
25 being placed in the file and going to the file

1 you just did it out of curiosity?

2 A. Yes, correct.

3 Q. And if I understood you correctly,  
4 you said you deleted your e-mails related to  
5 the merger transaction shortly after the  
6 closure of the merger between OHSL and  
7 Provident, correct?

8 A. No. I would say that usually I do  
9 not retain my e-mails, because we have a limit  
10 on how many e-mails we're permitted to retain  
11 and at some point they may have been deleted.  
12 All I know is that yesterday I did not have any  
13 e-mails and I looked for them.

14 Q. Do you think you deleted any  
15 e-mails after litigation was initiated in  
16 November of 1999?

17 MR. BURKE: Counsel, you know  
18 that's an improper question. First of all,  
19 that's a case that you voluntarily dismissed,  
20 so there's no obligation to preserve until  
21 after November of 1999.

22 Secondly, there was no discovery  
23 request to this person or KMK from that  
24 litigation, so again I object to that question  
25 as misleading. You may answer.

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1 room. What happens to the e-mail and the other  
2 information that you may have maintained in an  
3 electronic form?

4 A. Well, my e-mail is deleted on a  
5 fairly regular basis. I did, prior to this  
6 deposition, out of curiosity more than anything  
7 else, check yesterday to see if I had any  
8 e-mails on my computer relating to this and  
9 couldn't find any, so I'm assuming that I  
10 deleted them in the ordinary course sometime  
11 shortly after the transaction was completed.  
12 I'm talking about the electronic copies --

13 Q. Right.

14 A. -- on my computer. I've already  
15 changed computers though twice since then, so  
16 that would also explain why there's nothing on  
17 the computer.

18 Q. So if I understand your testimony  
19 correctly, you checked yesterday out of  
20 curiosity, and this is a computer twice removed  
21 from 1999, correct?

22 A. Right. Because I didn't know if  
23 there was anything on our network that might be  
24 under my name.

25 Q. But you weren't asked to do that,

1 A. I would have -- if I had been told  
2 not to delete something, I wouldn't have  
3 deleted it. But like I said, I do delete my  
4 e-mails because it clutters up my e-mail box,  
5 so at some point -- it could have even been  
6 during the transaction or after the  
7 transaction, I don't know.

8 All I know is that when I checked,  
9 and I do specifically recall checking  
10 yesterday, because again out of curiosity I  
11 wanted to know, I didn't see anything. So  
12 that's a -- that's all I know about e-mails. I  
13 have no specific recollection about even  
14 sending an e-mail in this case, although maybe  
15 we did send some. I just don't know.

16 Q. Do you have any specific  
17 recollection of litigation being pending before  
18 the transaction closed?

19 MR. BURKE: Objection. Asked and  
20 answered.

21 A. I believe that Mark Magee told me  
22 that there was some litigation about the  
23 transaction at some point. I couldn't pin the  
24 time frame down for you, but I do have a  
25 recollection that he told me that.

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1 Q. Do you believe that you deleted an  
2 e-mail after Mr. Magee told you that?

3 MR. BURKE: Objection. Asked and  
4 answered.

5 A. I don't recall. I --

6 Q. Can I direct your attention to  
7 page four of this document?

8 A. Sure.

9 MR. BURKE: Exhibit 237. Is that  
10 what we're on?

11 Q. Yes. Actually it's this page.

12 A. Oh.

13 MR. MAUNDRELL: What, 266?

14 Q. It's cut off at the bottom, it  
15 looks like 268.

16 MR. BURKE: 268.

17 Q. Okay. Do you see where it says  
18 Recommendation to Stockholders?

19 A. I do.

20 Q. Do you see that someone apparently  
21 circled that?

22 A. Yes, I do.

23 Q. Do you have any idea why someone  
24 may have circled it?

25 MR. BURKE: Objection. Calls for

1 would not have been within his knowledge or  
2 expertise, so I would say no.

3 Q. What I'm trying to get at is, who  
4 was in charge of assembling the overall  
5 document and putting it together, even if it  
6 wasn't his or her particular area of expertise.  
7 Was there such a person at KMK?

8 A. Oh, I see what you're saying. In  
9 terms of the ministerial act of assembling the  
10 various pieces?

11 Q. Yes. Let's take the ministerial  
12 acts first.

13 A. That would have been Mark.

14 Q. Okay. And this is not -- this  
15 does not go to ministerial acts, but who was in  
16 charge of saying that a particular section of  
17 the document was final? For example, were you  
18 the person who was in charge of saying that The  
19 Merger Agreement was final?

20 MR. BURKE: The Merger Agreement?  
21 I don't follow you.

22 A. No, I wasn't.

23 MR. BURKE: Objection to form.

24 Q. Okay. Who was in charge of saying  
25 that the plan of merger was final?

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1 speculation.

2 A. I have no idea.

3 Q. Do you ever remember discussing  
4 this particular page and this particular circle  
5 at or around September 1st, 1999?

6 A. No.

7 Q. Is it fair to say that comments  
8 and input on the merger documents were coming  
9 back to KMK and Mark Weiss?

10 A. What merger documents are you  
11 referring to?

12 Q. Proxy materials, the registration  
13 statement and other merger -- The Merger  
14 Agreement.

15 A. After The Merger Agreement had  
16 been signed?

17 Q. Yes.

18 A. Yes.

19 Q. And was Mark Weiss the person most  
20 knowledgeable about the assembling of the  
21 entire document?

22 MR. BURKE: Objection. Calls for  
23 speculation.

24 A. I would, I would say not. I mean,  
25 there were areas of this document clearly that

1 A. The two principals, which would  
2 have been PFGI and OHSL Financial.

3 Q. And which people --

4 A. In other words, when our clients  
5 decided -- when our client, PFGI, and when  
6 Dinsmore's client, OHSL, were satisfied that  
7 the document was in a proper and correct form  
8 and included all of the pertinent provisions  
9 that needed to be included, then it was final  
10 and then it was signed. And so that's  
11 ultimate -- ultimately the responsibility was  
12 with the two respective clients.

13 Q. And what person did that  
14 responsibility lie with at PFGI?

15 A. Bob Hoverson eventually.

16 Q. And what person did that lie with  
17 at OHSL?

18 A. I don't know. I, I -- I don't  
19 know. I can make an assumption.

20 MR. GILLIGAN: No.

21 A. But I guess I'm not allowed to do  
22 that.

23 MR. GILLIGAN: Just what you know.

24 Q. It would be either Ken Hanauer or  
25 Norbert Brinker, correct?

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1 MR. MAUNDRELL: Objection.

2 MR. BURKE: Objection. Asked and

3 answered.

4 A. I don't know. It could be the

5 whole Board.

6 MR. BRAUTIGAM: Okay. Let's take

7 a short break.

8 (Brief recess.)

9 BY MR. BRAUTIGAM:

10 Q. Mr. Matthews, did you form an

11 opinion with respect to the quality of the work

12 that McDonald & Company did with respect to the

13 transaction?

14 MR. BURKE: Objection. Calls for

15 speculation.

16 A. No.

17 Q. Do you know that McDonald &

18 Company was covering Provident stock at the

19 same time they were advising OHSL on the deal?

20 A. No.

21 Q. Do you know that McDonald &

22 Company had issued a buy recommendation of

23 Provident stock at a relevant point in the

24 deal?

25 MR. MAUNDRELL: Objection.

1 MR. BURKE: Objection to form.

2 And there's no such thing as an OHSL

3 shareholder in March 2003.

4 A. I think I also already told you

5 that I was not really familiar with the 2003

6 restatement except that there was one. But I

7 know nothing of the details of that restatement

8 or why, or why it was done or its import, so --

9 Q. You understand that Provident

10 stock lost a significant amount of value in a

11 short amount of time, correct?

12 A. No. I don't own any Provident

13 stock and I don't follow it.

14 MR. GILLIGAN: Obviously not

15 prepared for the deposition.

16 MR. BRAUTIGAM: Did you get Mr.

17 Gilligan's comments?

18 COURT REPORTER: Yes.

19 THE WITNESS: Mr. Gilligan, was I

20 supposed to buy some stock?

21 MR. GILLIGAN: No.

22 MR. BRAUTIGAM: Mr. Matthews, I

23 thank you for your time and I have nothing

24 further.

25 THE WITNESS: Great. Thank you.

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1 MR. GILLIGAN: Excuse me, what's

2 that? What's relevant? What's the time? Give

3 that --

4 A. I didn't know at any time, Mike.

5 Q. Okay.

6 MR. GILLIGAN: Okay. Well, then

7 it doesn't matter.

8 Q. Do you think that's a potential

9 conflict of interest?

10 MR. MAUNDRELL: Objection.

11 MR. BURKE: Objection. They're

12 not defendants. Go sue them. You can answer

13 it.

14 A. No.

15 MR. GILLIGAN: He's asking you as

16 an expert apparently, so --

17 A. Doesn't trouble me at all.

18 Q. Even given the way the transaction

19 was structured?

20 MR. BURKE: Objection, form.

21 A. I think I already answered that.

22 It doesn't trouble me.

23 Q. Okay. Do you believe that the

24 March 2003 restatement had an effect on the

25 OHSL shareholders?

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TIMOTHY B. MATTHEWS, ESQ.

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(Deposition concluded at 4:00 p.m.)  
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